

## LAST MINUTE MEMORANDUM

**DATE:** April 30, 2004

**TO:** MEMBERS, STATE BOARD OF EDUCATION

**FROM:** Sue Stickel, Deputy Superintendent  
Curriculum and Instruction

**RE:** Item No. 23

**SUBJECT:** Special Education: Approve amendments to proposed Title 5 Regulations regarding withholding funds

The Economic and Fiscal Impact Statement on the modified regulation has been reviewed. The analysis was received too late to submit with the agenda item and is being submitted now as a Last Minute Memorandum.

The original proposed regulation submitted in January 2004 was determined to have no adverse fiscal impact against the state and that implementation of this regulation is required by Federal Law, so there is no new state mandate involved. As a result of input received during the 45-Day comment period, changes were made to the original regulation that necessitated a new Economic and Fiscal Impact Statement Analysis.

Though there may be some costs involved with the implementation of the proposed amended regulation, the Economic and Fiscal Impact Statement concludes that these costs can be absorbed within the existing budget.

[Attachment 1](#): Economic and Fiscal Impact Statement (6 pages)

**Economic and Fiscal Impact Analysis  
Proposed Amendment of Title 5, CCR, Regulations  
Relating to the Withholding Funds—Special Education Mandates**

The Fiscal Policy Office has reviewed for economic and fiscal impact the proposed (version 03/29/04) regulation adding Sections 3088.1 and 3088.2, of Article 7, Subchapter 1, Chapter 3, Division 1, Title 5, of the California Code of Regulations, relating to Withholding Funds—Special Education Mandates.

**What would the proposed regulations do?**

The proposed regulations will establish procedures consistent with Federal and State law that enable the Superintendent of Public Instruction (SPI) to withhold funds from a local education agency (LEA) when noncompliance with special education mandates has been determined. The regulation also establishes that the SPI shall continue funding when it is determined that a non-complaint LEA has made substantial progress toward compliance with special education mandates.

**Do the proposed regulations impose a local cost mandate?**

The proposed regulations *would* create a new program or higher level of service in an existing program, however, the activities specified in the regulations are necessary in order to implement the federal and state statute; therefore, any costs associated with the activities are attributable to the federal and state statute and are therefore *not reimbursable*.

**Do the proposed regulations impose costs upon the state?**

The proposed regulations *would* impose costs upon the state, however, the activities specified in the regulations are necessary in order to implement the federal and state statute; therefore, any costs associated with the activities are attributable to the federal statute. It is further believed that the department will be able to absorb these additional costs within their existing budgets and resources.

**Do the proposed regulations impact local business?**

The proposed regulations should have no impact on local business.

This analysis reflects the attached Economic and Fiscal Impact Statement.

  
\_\_\_\_\_  
Donald E. Killmer, Consultant  
Fiscal and Administrative Services Division

04/16/04  
Date

  
\_\_\_\_\_  
Gerald C. Shelton, Director  
Fiscal and Administrative Services Division

4/22/04  
Date

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Note: The purpose of the Department's review of regulations for Economic or Fiscal Impact is in part to, determine prior to the Department's submission of the Notice of Proposed Rulemaking to the Office of Administrative Law (OAL), if the regulations impose a mandate upon the locals and if so if there is a cost or savings. Additionally, the review may make a determination of what the cost or savings "may" be and if there is precedence in the determination of the potential costs through previous claims reimbursable through the mandate process authorized in state statute and set forth by the CSM.

If the Department determines that a potential mandate and an additional cost exists, the Department is required to forward that information (via the STD. 399 and this analysis) to the Department of Finance (DOF) for their review. The review by DOF does not need to be completed prior to the Department's submission of the Notice of Proposed Rulemaking to OAL but must be completed prior to the closing of the "Rulemaking Record" and prior to OAL forwarding of the "Record" to the Secretary of State. The DOF review contains an approval or disapproval; typically regulations that impose or could potentially impose an additional cost upon the state are disapproved and the department is required to amend the regulation to eliminate the cost or pull the "Record".

STATE OF CALIFORNIA

**ECONOMIC AND FISCAL IMPACT STATEMENT**  
**(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 2-06)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME Education	CONTACT PERSON Don Killmer	TELEPHONE NUMBER 323-2591
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Withholding Funds - Special Education Mandates (version 03/29/04)		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT**

**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |   |
|---|---|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements  |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards                                   |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals   |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) \_\_\_\_\_

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

3. Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (list areas): \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_

**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

- |  |                                |              |
|--|--------------------------------|--------------|
| a. Initial costs for a small business: \$ _____        | Annual ongoing costs: \$ _____ | Years: _____ |
| b. Initial costs for a typical business: \$ _____      | Annual ongoing costs: \$ _____ | Years: _____ |
| c. Initial costs for an individual: \$ _____           | Annual ongoing costs: \$ _____ | Years: _____ |
| d. Describe other economic costs that may occur: _____ |                                |              |

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-90)**

2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$ \_\_\_\_\_
4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \$ \_\_\_\_\_ and the number of units: \_\_\_\_\_
5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

**C. ESTIMATED BENEFITS** *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_
2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?  
Explain: \_\_\_\_\_
3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

**D. ALTERNATIVES TO THE REGULATION** *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- |                |                   |                |
|----------------|-------------------|----------------|
| Regulation:    | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |
3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No  
Explain: \_\_\_\_\_

**E. MAJOR REGULATIONS** *(Include calculations and assumptions in the rulemaking record.)*  
*Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.*

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)**

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip the rest of this section)
2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:
- Alternative 1: \_\_\_\_\_
- Alternative 2: \_\_\_\_\_
3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:
- |                |          |                                 |
|----------------|----------|---------------------------------|
| Regulation:    | \$ _____ | Cost-effectiveness ratio: _____ |
| Alternative 1: | \$ _____ | Cost-effectiveness ratio: _____ |
| Alternative 2: | \$ _____ | Cost-effectiveness ratio: _____ |

**FISCAL IMPACT STATEMENT**

**A. FISCAL EFFECT ON LOCAL GOVERNMENT** (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:
- ☐ a. is provided in (Item \_\_\_\_\_, Budget Act of \_\_\_\_\_) or (Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_)
- ☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)
- ☒ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
- ☒ a. implements the Federal mandate contained in Public Law 107-110 "No Child Left Behind Act of 2001"  
\_\_\_\_\_
- ☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_
- ☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)
- ☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;
- ☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;
- ☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.
- ☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.
- ☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)**

- ☐ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

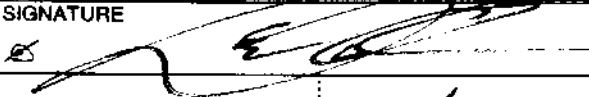


**B. FISCAL EFFECT ON STATE GOVERNMENT** (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- ☒ 1. Additional expenditures of approximately \$ Unknown in the current State Fiscal Year. It is anticipated that State agencies will:
- ☒ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.

- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE		TITLE	
		Ed. Fiscal Services Consultant	
04/16/04			
AGENCY SECRETARY <sup>1</sup>		DATE	
APPROVAL/CONCURRENCE		Deputy Superintendent	4/23/04
DEPARTMENT OF FINANCE <sup>2</sup>	PROGRAM BUDGET MANAGER	DATE	
APPROVAL/CONCURRENCE			

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.